Order No. SWL 208 LLD 79

Bangalore, dated 13th March 1979.

Whereas the Government of Karnataka are of opinion that an Industrial Dispute exists between the workmen and the management of M/s. A. Albuquerque and Sons, Hoige Bazar, Mangalore on the points noted below;

And whereas the Government of Karnataka consider it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Karnataka hereby refer the said dispute for adjudication to the Labour Court at Mangalore.

Points of Dispute

"I. Is the Management justified in striking off the name of Sri A. Rodrigues, Clerk when he applied for leave from 18th January 1978 and refusing him employment from 31st March 78 when he reported for duty ?

II. If not, to what other relief the said workman is entitled ?"

By Order and in the name of the Governor of Karnataka,

H. V. SOMASEKHARAIAH,
Under Secretary to Government,
Social Welfare and Labour Department.

615—S.O. 1309

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute :—Industrial dispute between the Workmen and the Management of Bharath Earth Movers Limited, Bangalore.

Award of the Presiding Officer, Industrial Tribunal, Bangalore, Published.

Read the following papers :—

(1) Letter No. IT 955/78-79, dated 26th February 1979 from Shri F. L. F. Alvares, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN KARNATAKA, BANGALORE.

Dated 21st February 1979.

PRESENT :

Sri F. L. F. Alvares, B.A., B.L.,
Presiding Officer

I. D. No. 32 of 1972.

I Party :	*II Party :*
Workmen represented by :—	**The Managements of :—**
(a) The General Secretary, Bharat Earth Movers Employees' Association, H. A L. Post, Bangalore-17.	(a) Bharat Earth Movers Ltd , Unity Buildings, Bangalore.
(b) The General Secretary, Bharat Earth Movers Employees Association, 48, IV Block Robertsonpet, Kolar Gold Fields.	(b) The General Manager, Bharat Earth Movers Ltd.. Rail Coach Division, Bangalore.
(c) The General Secretary, Bharat Earth Movers Union, A. P. K. Building, Hendrys Colomodal Post, K.G.F.	(c) The General Manager, BEML Earth Movers Division, K.G.F.

Appearances

For I (a) & (b) Parties :—Sri A. Nagesh Rao, Advocate, Bangalore.

For I (c) Party :—Sri K. Subba Rao, Advocate, Bangalore.

For II (a) (b) & (c) Parties :—Sri B. R. Dolia and G. Venkataraman, Advocates, Madras-1.

Order of Reference,

(Government Order No. FCL 1077 LLD 72(i) dated 28th August 1972)

AWARD

As per Government Order No. FCL 1077 LLD 72(i) dated 28th August 1972 issued in exercise of its powers under Section 10 (1)(d) of the Industrial Disputes Act, 1947, the State Government has referred the following points of dispute to this Tribunal for adjudication :—

"(i) Are the Management of Bharat Earth Movers Limited, Bangalore, justified in declaring 12.62% of wages as bonus for their workmen for the year 1971-72 ?

(ii) If not, what quantum of bonus are the workmen entitled to ?".

2. In the first instance, Parties I(a) and (b) filed a brief statement of claim annexing a statement containing the calculation of bonus for the year 1971-72 made by it (also extracted here below) and alleging that the II Party has earned huge profits so much so the grant of bonus for the year 1971-72 at 12.62% was wholly unreasonable and arbitrary, contended that the I Party workmen are entitled to a higher percentage of bonus.

Calculation of Bonus for 1971-72.

1.	Net Profit as per P & L Account.		2,84,58,000
2.	Add back provision for :		
	(a) Bonus to employees	31,0[illegible],000	
	(b) Depreciation	99,54 000	
	(c) Direct taxes	1,45,00,000	
	(d) Int. relating to previous years.	11,56 000	
	(e) Development Rebate/ allowance.	45,00,000	
	(f) Any other Reserves :		
	(i) Reserve for bad and doubtful debts.	7,37,000	
	(ii) Provision for warranty.	20,91,000	
		3,60,38,000	
3.	Add back also :		
	(a) Bonus paid in respect of previous years.	18,96,000	
	(b) Donation paid in excess	2,00,000	
		3,81,34,000	
4.	Total of items 1, 2 and 3 (Gross profits).		6,65,92 000
5.	Deduct prior charges :		
	(a) Depreciation	1,12,92,181	
	(b) Development rebate/ allowance	35,13,09[illegible]	
	(c) Direct taxes	1,56,51,000	
	(d) 8 5% on paid up capital	1,01,13,000	
	(e) Int. at 6% on reserves	19,86,000	
		4,25,55,575	4,25,55 575

Available Surplus Rs. 2,30,35,525
Allocable Surplus Rs. 1,43,01,315

Bangalore
Date 13-10-1972

Sd.....
For First Party (a) & (b)

3 Party I (c) averred as follows :—

3. The Bharat Earth Movers Limited, viz., is having two separate establishments, one at Bangalore, where its Rail Coach Division is located, and the other at K G.F., where its Earth Movers Division is located. They are separately registered as 'Factories' under Factories Act and for the purpose of payment of bonus Act under Section 3, they are distinct and separate Establishments. About 4000 workmen are employed at each one of the Divisions. The uniform declaration of bonus at 12.62% for the workmen employed in both the Divisions is not justified. The calculation of allocable surplus ought to have been done separately for the two Divisions. This was necessary in view of the fact that the two Divisions are separate Establishments and as a consequence, the workmen became entitled to bonus having regard to the profits earned by the Establishment in which they work. The II Party was not justified in consolidating the accounts of the two distinct and separate Establishments. Separate Accounts are also being maintained for the two Establishments. There is no connection between the two establishments except the fact that they are owned by the same Company. One Establishment is not depending upon the other. The products manufactured at the two Divisions are different. The raw materials required for the production of the equipment are purchased separately. There are separate Sales Organisations for the two Establishments. Therefore, the workmen are justified in contending that the Earth Movers Division at K.G.F. has to be treated as a separate and distinct Establishment for the purpose of bonus for the Accounting Year 1971-72 Launching production in 1967, the Earth Movers Division, K G F., made rapid strides and started earning fabulous profits, but the wages and the other benefits paid to the workmen due to whose hard work huge profits realised are shockingly meagre and low. A careful perusal of the Profits & Loss Account and the Balance Sheet and other accounts will indicate that what has been paid to the workmen as bonus is not in accordance with law. The profit & Loss Account cannot be relied upon as it contains many inaccurate statements. The II Party has deliberately inflated certain items of expenditure with a view to show that the profits earned do not justify the claim for higher percentage of bonus. After inspection of the accounts maintained and obtaining the necessary particulars, a separate statement of calculation would be filed to show that the II Party was not justified in declaring 12.62% as bonus and the workmen are entitled to the maximum of 20% according

to law. The II Party's plea that the workmen are not entitled to the claim of the Profit sharing Bonus in view of the Settlement dated 21st April 1958 alleged to have been entered into by the workmen and the management of Hindustan Aircraft Limited is not sustainable that such a contention was raised in the dispute between the workmen and the management of Hindustan Aircraft Limited and the said contention was repelled by the Additional Industrial Tribunal, Bangalore. The said Settlement is also not binding upon the I party workmen who are employed in the Earth Movers Division K. G F. Further, the said Settlement its as not been entered into in accordance with law. In the II Party-Establishment, The Earth Movers Division, K. G. F., has made sufficient profits justi ying the workmen's claim for 20% bonus.

4. The II Party filed a Statement Containing the following averments:—

The II Party is a Government Company established in the public Sector and functioning under the Administrative Control of the Ministry of Defence, Department of Defence Production, Government of India. All the shares of the Company are held by the Central Government. Both the Rail Coach Factory at Bangalore and the Earth Movers Factory at K. G F. are presently owned by the said Company. The Rail-Coach Factory was originally a Division of the Hindustan Aircraft, Limited. By an order dated 28th September 1974, the Rail Coach Division was transferred from the Hindustan Aircraft Limited (which, upon amalgamation with Aeronautics (India) Limited, came to be known as Hindustan Aeronautics Limited)? to Bharat Earth Movers Limited, a company which was incorporated on 11th May 1964. Similarly, with the transfer of Rail coach Division, the Earth Movers Division, which also had its beginning as part Hindustan Aircraft, Ltd., stood transfered to Bharat Earth Movers Limited. These transfers did not bring about any break in service of the employees in the two Divisions. Their services stood transferred to the II Party and continued uninterruptedly with the same conditions of service. The result of such transfer was that agreements and obligations pertaining to the two divisions stood transferred to the II Party. On 21st April 1958, when the Rail Coach Division was part of the Hindustan Aircraft, Limited, a Memorandum of Settlement was entered into between the Management of Hindustan Aircraft, Limited, as it then was, on the one hand, and its workmen, which included the employees of the Rail Coach Division, on the other hand, in accordance with law. One, of the 18 demands dealt with by the said Memorandum related to the claim of Profit Sharing Bonus. As the Hindustan Aircraft Limited, was an Establishment in the Public Sector, the management was not free to pay any Profit Sharing Bonus, as such, according to the Government Policy then in force and: therefore, agreed that in lieu of it, they would pay an Annual Bonus linked to production. Even at that

fime, there was a system of individual/group Incentive Scheme, based on performance, und r which saving in estimated time in actual performance was rewarded by additional payment of wages. There was no demand from the employees for a further Incentive Scheme such as, Production Bonus. The Management offerred Production Bonus Scheme in lieu of Bonus passed on Profits, since Profit Sharing Bonus demanded by he employees could not be paid as such, being a public Sector Establishment. This was in addition to the pre-existing scheme of Incentives which also continued. In accordance with the provisions of the said Settlement and Schemes, which is now also binding on the II Party and its employees in the Rail Coach and Earth Movers Divisions, the II Party has been paying Production Bonus to its employees. Therefore, the II Party's Workmen who are receiving Production Bonus are ineligible to any Profit Sharing Bonus under Section 32 (vii) (a) of the Payment of Bonus Act. Practically, all workmen, on whose behalf, demands have been made for bonus for the year 1971-72 and for whose benefit the present reference has been made, are entitled to Annual Production Bonus linked with production or Productivity in lieu of bonus based on profits under the existing scheme introduced persuant to their Agreement dated 21st April 1958. Hence, none of the provisions of the Payment of Bonus Act are applicable to the I Party-workmen and the said workmen are not entitled to Profit Sharing Bonus for 1971-72. The II Party is not under any legal obligation to justify declaration of 12.62% as bonus for the year 1971-72 for the reason that such declaration is purely an *exgratia* payment. The answer to the first point of dispute would, therefore, be that the II Party is under no duty to justify the declaration of 12.62% of wages as bonus for their workmen for the year 1971-72 and the answer to the second point of dispute would be that the said workmen are not entitled to any bonus for the said year. The above position is not to any extent, altered by the Payment of Bonus Amendment Ordinance because the said Ordinance does not amend Section 32 (vii) (a) of the Act, on the basis of which the II Party contends that the Act is not applicable to its workmen. The II Party further stated that in an earlier Reference of a claim to Profit Sharing Bonus for the 3 years ending with March 1965 and which was the subject-matter of A I D 12 of 1966 before the Additional Industrial Tribunal, Bangalore, a similar contention based on Section 32 (vii) (a) of the Act was raised by the II Party but the same was negatived by the Tribunal in its Award dated 2nd August 1971. The II Party has filed W. P. No 2384/71 against the said Award in which a method of calculation of available surplus, which is not in accordance with the Bonus Act, was adopted by the Tribunal. The Writ petition is pending. Based on the Award dated 2nd August 1971, the workmen put forward a claim for Profit Sharing Bonus even for the subsequent years. Since the said claim was not accepted by the II Party, an Industrial Dispute arose and

the same was taken up in conciliation. Eventually, on 9th October 1971, a Settlement was arrived at under Section 18 (3) of the Industrial Disputes Act without prejudice to the contentions and rights of the Parties involved in A.I D. No 12 of 1966 and pending in W.P. No. 2384/71. In accordance with the said Settlement, for the years 1964-65 to 1969-70, the amount of production bonus deducted from the workmen by adjusting it against the *Ex gratia* Bonus which the II Party had paid was refunded. In this manner, the workmen have received *Ex-gratia* Profit Sharing Bonus for all the said years without deduction of the Production Bonus th refrom. In the same manner, pursuant to the said Settlement, for the years 1970-71 also *Ex-gratia* Profit-sharing Bonus was paid at 12% without deducting the Production Bonus Clause (ix) of the said Settlement also provides for the payment of *ex-gratia* Bonus for the year 1971-72. It will thus be seen that so far as 1971-72 is concerned, Profit Sharing Bonus is payable to the workmen either as *ex-gratia* bonus. if the payment of Bonus Act was not applicable as contended by the II Party, or as under the said Act, if the said Act was applicable as contended by the workmen. But, what is more important is that according to the said Agreement, bonus to be so paid is to be calculated in the manner prescribed by the Payment of Bonus Act, 1965, as amended from time to time.

5 Producing along with its objection Statement, (1) a Statement of Account showing the gross profits computed as specified in the II Schedule to the Act, (2) a statement of account showing sums deductable from the gross profits for the purpose of computing the available surplus as per Section 5 and 6 of the Act, (3) a statement of account showing the direct taxes which the employer is entitled to deduct from the gross profits calculated as per Section 7 of the Act, and (4) Balance Sheet-cum-Profit & Loss Account for the year 1971-72 as audited by its statutory Auditors and also by the Comptroller and Auditor General of India, the II Party proceeded to urge that the available surplus for the year 1971-72 comes to Rs. 53.29 Lakhs and the allocable surplus on this basis according to Section 2(4) (b) comes to Rs. 31.97 lakhs, that on this basis, the Profit Sharing Bonus that could be paid in accordance with the Act, if the Act is applicable is thus 11.53% only, that however, the II Party decided to give a larger amount of 12,62% by adding to the profit as per profit & Loss Account, a sum of Rs. 11.56 lakhs being interest paid under Section 217 of the Income Tax Act, though on strict interpretation of law, it need not have been so added and accordingly, announced payment of it by its General Bulletin No. 175 dated 22nd August 1972. At the request of the Unions, the II Party disbursed the amount without prejudice to the rights of the parties in W. P. No. 2484/71 and the present proceedings. Therefore, the II Party is not liable to pay any Profit Sharing Bonus to the workmen as the Act was not applicable to them and in case it is held that the Act was

applicable to them, the Bonus payable in accordance with the Act is 11,53% only.

6. Dealing with the Statement of Claim, filed by Parties I (a) and (b) and the calulation of bonus in the Annexure 2, the II Party further contended as follows :—

Parties I (a) and (l) are not entitled to contend that the declaration of 12.62% is not justified and that the maximum should have been granted. The calulation of allocable surplus in the Statement as Rs. 1,43,01,315/- is not in conformity with law and is opposed to the provisions of the Act laying down the manner in which the available surplus and the allocable surplus are to be arrived at. Some of the errors in the calculations made by Parties I-A and B are the following :—

The I Party was not entitled to add to the net Profit as per Profit and Loss Account, the sum of Rs. 11,56,000 paid as interest under Section 217 of the Income Tax Act and is an item of expenditure wholly or principally incurred for purposes of the business of the Company and as such, is deductable in arriving at the Net Profits. There is, therefore, no justification to add back the same, though for technical reasons, it may not be a permissible deduction under the Income Tax Act for the year 1971-72. (2) In the Profit and Loss Account for the year 1971-72, the Company made a provision of Rs. 20,90,803 to meet the warranty claims. The actual expenditure on this account amounted to Rs. 13,92,673 since the former amount, which was only a provision, has been added back to the net profit as per the Profit and Loss Account, it follows that the latter amount, which was the actual expenditure incurred should be deducted. This is what has been done by the Company. But, the I Party, while retaining the benefit of the add back of the former amount, has omitted to deduct the later amount. The I Party is not justified in adding back the former amount without deducting the latter amount. (3) The II Party has deducted, from out of the gross profit, a sum of Rs. 1,69,48,188 as depreciation admissible under Section 32 (1) of the Income Tax Act and a sum of Rs. 57,25,740 as Development Rebate under Section 35 (2) of the Income Tax Act, both being permissible deductions under the Payment of Bonus Act and having been certified by the Auditors. But the I Party has indicated smaller sums as deductable without assigning any reasons or the basis therefor. (4) As against the sum of Rs. 2,32,82,584 deducted by the II Party towards Direct Taxes calculated on the gross profit as per the Payment of Bonus Act, the I Party has indicated a sum of Rs. 1,56,51,000 only. There is no justification for taking this lesser sum and the I Party has also not given any reason for substituting a smallar sum. The deduction made by the II Party is in accordance with the Supreme Court's decisions. (5) The II Party has deducted as Prior Charges the 6% on the Reserves shown in its

Balance Sheet as at the commencement of the Accounting Year. Reserves amounted to Rs. 702.09 Lakhs and 6% thereon worked out to Rs. 42,12,569. As against these figures, the I Party has adopted a much smaller sum of Rs. 19,86,300 without any basis. If the above errors in calculation committed by the I Party are rectified, the allocable surplus works out to Rs. 31,97,288 as against Rs. 1,43,01,315 indicated by the I Party.

7. With reference to the contentions raised by Party I-c, a separate statement was filed by the II Party saying that the Earth Movers Division took its birth in Hindustan Aircraft Ltd., of which the Rail Coach Factory was a constituent Division. The processing of the Project and the initial spade work were carried out in the Earth Mover Division within the Hindustan Aircraft, Limited, pending the formation of a new Company in the Public Sector. After that, new Company was found and given the name of BHARAT EARTH MOVERS, LIMITED, which took over from Hindustan Aircraft, Ltd., the Rail Coach Factory as well as the Earth Mover Division. The Earth Mover Division then had no assets. The Assets which were so taken over by the New Company were of the Rail Coach Factory valued at six crores of rupees and that formed the intial capital of the Bharth Earth Movers, Limited, and which Rail Coach as well as Earth Mover Undertaking were parts. Even now, the Earth Mover Division and the Rail Coach Division are only constituent parts of one Division, *viz.*, the Bharth Earth Movers, Limited. The Share Capital, Reserves, interest and Tax liabilities for the Company in its entirety is one. There has been no allocation of Capital, Reserves, interest and tax liabilities of the Company between the two Divisions. Whatever funds are required for the projects of any of the Divisions, the same are drawn from the common fund. Only one Balance Sheet has all along been prepared for the entire Company in accordance with the Companies Act. It is only for administrative and accounts control that separate Profit and Loss Accounts are prepared for the two Division. Except for local variations. the conditions of service in the Certified Standing Order, which is common to both the Divisions are almost identical. The top management which consists of the Board of Directors, the Managing Director. the Financial Controller, the Industrial Relations Manager and Chief Administrative Officer is the same and common to the two Divisions. In the face of these facts, it is wholly untenable to contend that the Earth Mover Division should be regarded as an independent establishment for the purpose of bonus computation. If the Earth Mover Division was an Independent Establishment, then the employees in the said Establishment would not have been entitled to any bonus in view of section 16 of the Payment of Bonus Act for it was newly set up and went into production in 1967. Further. in such event, there would have been no ground to introduce 'production Bonus' which was a legacy from the Hindustan Air 'Craft

Limited. Under Section, 3 of the Act where an establishment consists of different Undertakings, whether situated in the same place or in different places all the Undertakings should be treated as parts of the same Establishment for bonus computation. It is only when a separate Balance Sheet and Profit & Loss Account are prepared, that the question of treating the different Undertakings separetely arises. The workmen have also accepted bonus computed on the basis that the two Divisions are parts of one and the same Establishment. This is also evident from the Memorandum of Settlement dated 9th October 1971 dealing with the bonus for the years 1964-65 to 1971-72. It is, therefore, impermissible in law now for the workmen to require that the Earth Mover Division should be treated separetely for bonus computation. The I Party-workmen are estopped from taking up a different stand now through a different Union. The Workmen are disentitled from contending that the Computation of bonus in the case of Earth Mover Division's workmen should be made separetely for that Division. The II Party's Accounts have been duly audited and certified, not merely by its qualified Auditors, but also by the Comptroller and Auditor General of India. There is a presupmtion under Section 23 of the Act that those Accounts are accurate. The Balance Sheet and the Profit & Loss Accounts have been prepared in the due and regular course of business. The I Party has not pointed out any of the particular items of expenditure as having been deliberately inflated with a view to showing less profits and in what other particulars, the accounts are incorrect The I Party's allegations, in this behalf are vague and baseless. The II Party is not liable to pay any Profit Sharing Bonus and if it is held that the Act applies, then, nothing more than what has already been paid is due.

8. A rjoinder was filed by the workmen at Parties I (a) and (b) in connection with some of the allegations made by the II Party :—

It is incorrect to say that the provisions of the Payment of Bonus Act are not applicable to the workmen by virtue of Section 32 (vii) (a) of the said Act as they are paid production Bonus only pursuant to an Agreement dated 21st April 1958 and that, therefore, they are not entitled to any Profit Sharing Bonus for the year under Reference. The II Party's contention that the Rail Coach Factory and the Earth Mover Factory were part of Hindustan Aircraft, that after their transfor to Bharat Earth Movers, Limited, what applied to Hindustan Aircraft, Limited, equally applied to BEML Undertaking, including the Memorandum of Settlement dated 21st April 1958 which, provided for Payment of Annual Production Bonus in lieu of Proft Sharing Bonus, and that the workmen are disentitled to any Profit Sharing Bonus are incorrect and untenable. The II Party is not entitled to contend that it is under no legal obligation to pay Profit Sharing Bonus to justify the declaration of only 12.62% as bonus for 1971-72 and to urge that the amendment of the Bonus Act does not alter he

position. The II Party's Industry is a new and independent one and has nothing to do with the Hindustan Aeronautics, Limited, or the alleged Agreement dated 21st April 1958. Neither the workmen nor any of their Unions have signed any Agreement or Settlement with the II Party for payment of Annual Production Bonus in lieu of Profit sharing Bonus and, therefore, the applicability of Section 32 (v i) ( ) of the Payment of Bonus Act to the workmen or their exclusion from the purview of the Payment, of Bonus Act does not arise. There was also no Agreement or Settlement between the workmen and the management of Hindustan Aeronautics, Limited, at any time with regard to the payment of any annual bonus linked with production or productivity in lieu of bonus based on profits. The alleged settlement dated 21st April 1958 is not legal valid or binding under the Industrial Disputes Act The persons who are said to have signed the same had no right or authority to negotiate, settle or sign an agreement with the management on behalf of the workmen. The said Agreement also does not contain any scheme for the payment of bonus linked with production or productivity in lieu of bonus based on profits. Therefore, the payment of production bonus to workmen is not in pursuance of the said Agreement. But, is a condition of service which the workmen are entitled to and the same is linked to efficiency and forms part of Production cost. The II Party therefore, cannot dispute or deny the workmen's right Profit sharing Bonus under the Payment of Bonus Act. Similar contentions alleged by the II Party in A I D No. 12 of 1966 were negatived and it was held that the Payment of Bonus Act applied to the workmen and that they are entitled to Profit Sharing Bonus. The II Party's averment made in connection with the Settlement dated 9th October 1971 and the Payment of the so called exagratia payment are untenable and irrelevant and cannot take away the workmen's right to Profit Sharing Bonus in accordance with the Payment of Bonus Act. The II Party's computation of the allocable surplus is wrong and erroneous. On a proper comuptation of the same, the workmen are entitled to nothing less than 20% for 1971-72. The calculations made by Parties I (a) and (b) in the Annexure to its original statement is in accordance with the Payment of Bonus Act.

9. Subsequently, the II Party filed an Additional Statement in connection with the contentions raised by the Party I-c.

10. In addition to the points of dispute scheduled in the Order of Reference, the following Issues arising out of the pleadings were framed :—

"1. Does II Party- Management prove that the declaration of the bonus at 12.62% for the year 1971-72 is in accordance with law and is justified ?

2. Do I Party-(A) and (B) workmen prove that the II Party-Management has earned huge profits due to the efforts of the workers

for the year in question and that therefore, they are entitled to higher percentage of bonus *viz.*, 20% of the total annual earnings as per the calculation made in accordance with the Payment of Bonus Act, 1965, as contained in the Annexure filed along with their claim statements ?

3. Do I Party (C) workmen prove that the Rail Coach Division, Bangalore and Earth Movers Division, K.G.F. are two separate and distinct establishments for the purpose of Payment of Bonus Act. that allocable surplus as per the provisions of the Payment of Bonus Act, ought to have been separately calculated by the Management having regard to the profits earned by each of the establishment, that the Mangement ought to have declared separate rate of bonus for I Party (C) workmen and the uniform declaration of bouns at 12.62% of wages is not justified ?

4. Do I Party-(C) workmen further prove that having regard to the profits earned by the Earth Movers Division, K.G.F. during 1971-72, they are entitled to get maximum bonus at 20% of the total annual earnings for the year 1971-72 ?

5. Does II Party-Management prove that the provisions of the Payment of the Bonus Act, do not apply to the I Party-workmen that the I Party-workmen are not eligible to receive Profit Sharing Bonus and they are only entitled to annual production bonus linked with production or productivity in lieu of bonus based on profits under the existing scheme introduced pursuant to an Agreement dated 21st April 1958 ?

OR

Does II Party-Management prove that even if the Payment of Bonus Act were to apply the bonus payable in accordance with the Act is only 11.53%.

6. Does II Party Management prove that the Settlement dated 21st April 1958 is binding on I Party-workmen and whether they could take such a contention in view of the Order of Reference ?

7. To what reliefs, if any, are the parties entitled ?

8. What Award.

The oral evidence in the case was adduced in the first instance by the II party who examined (1) M. W.-1 R. Gopalan, Deputy Financial Controller of the II Party, (2) M W. 2. C. B. Venkata Rao, Chartered Accountant and Partner of M/s. B. K. Radadyani & Company and (3) M. W. 3. N. T. Raju, Consulting Actuary. Parties I A, B and C have not adduced any oral evidence (vide Order Sheet dated 1st June 1978 in respect of parties I-A and B and order sheet dated 5th June 1978 in respect of Party I-C and the Memos respectively filed by them). I have heard the Counsels appearing for the parties and perused the records,

11. **Issue No. 3** :—The contention covered by this Issue has been raised by Party I-C who urges that the divisions of the II Party, namely, the Rail-Coach Division, Bangalore, and tha Earth Movers Division, K. G. F., should be treated as separate establishments for the purpose of calculating the Allocable surplus and de-laration of bonus under the Payment of Bonus Act. Except eliciting in the cross examination of M, W. 1 Gopalan that the Earth Movers Unit at K. G. F. has been separately registered under the Factories Act, that the raw materials required and so also the items manufactured at the two divisions are different, that till the stage of preparing the Propit & Loss Account and the Balance Sheet, all the accounts of the two Divisions are maintained separately by the II Party and that there are separate Recruiting Agencies for making appointments and separate Disciplinary Authorities for the two Units, no other factor or circumstance has been brought on record by thr party I-C to treat the two divisions as separate units for the purpose of computing the Allocable surplus. It is not denied by Party I-C that both the divisions are owned by the II Party which is a Government Company established in the Public Sector with all the shares held by the Central Government and having common management. The submission of the Party I-C, which appears to be a Union of the workers employed in the Earth Movers Division of the 11 Party, that the Earth Movers Division of the II Party has been making larger profits than the other division, namely, the Rail Coach Division, and that therefore Party I-C workers should be treated as a separate entity for the purpose of payment of bonus is not justified on the material on record. There is no material to show that by treating the two Divisions as one Unit for the purpose of payment of bonus, Party I-C workmen have been deprived of their legitimate bonus. When the Profit and Loss Account and the Balance Sheet of the II Party has not been split up, Party I-C workmen cannot contend that unfair labour practice has been practised by the II Party and that the II Party should be directed to split up its accounts. No legal provision permitting such a direction to be given to the II Party. has been cited by Party I-C's Counsel. The Very assertion of Party I-C that since saparate products are manufactured by the two divisions. the calculation of bonus should be done separately is therefore not tenable. this Issue is hold against Party I-C.

11(a) Issues Nos. 5 and 6.—It is the contention of the II Party that it is the successor of Hindustan Aeronautics, Ltd., which had entered into an agreement with the workmen under the agreement dated 21st April 1958 for payment of annual bonus linked with production or productivity in lieu of bonus based on profits and that on transfer of the two divisions to the II Party as indicated in its statement, the rights and obligations arising under the said agreement dated 21st April 1958 have devolved upon the two Parties and became binding on both. Thus, It is contended that no Profit Sharing Bonus under the Payment of Bonus Act is payable.

11(b) The II Party had raised the very same contention in I D. No. 98/66 of this Tribunal which related to the payment of bonus for 1963 to 65 As per the award passed therein, th II Party's contentions were negatived and it was held that the Payment of Bo us Act applied to the II Party's workmen and that they are entitled to to Profit Sharing Bonus at the rate of 4 per cent of their total annual wages. against this award, the II Party filed Writ Petition No. 2384/1971 on the file of the High Court of Karnataka, and th same is pending There is no dispute that the decision in W. P. 2384 71 with regard to the applicablity of the Payment of Bonus Act for the years in question will hold good and apply to the present proceedings. Therefore, the findings on these Issues will abide by the result of the decision in W. P. 2384/71. Held accordingly.

Point of Dispute No. 1 and Issues 1. 2 and 4.

12. The award of bonus at 12.62% for the year 1971-72 has been sought to be justified by the II Party by relying upon Ext. M 12-Statement prepared according to the form prescribed in the Second Schedule of the Act by its Chartered Accountants B. K. Ramadyani and Co., of which M. W. 2 C. B Venkata Rao is one of the partners. Ext. M. 12 statement shows that the gross profits for the purpose of bonus is Rs. 651.99 lakhs. that the available surplus is Rs. 58. 32 lakhs and that the Allocable surplus at 60% thereof is Rs. 34.99 lakhs, The II Party would, however, say that as per this calculation, a sum of Rs. 11.56 lakhs paid as penalty under Section 217 of the Income Tax Act has been added back as income, though the said amount was not liable to be added back under law Thus, according to the II Party, the bonus paid at 12.62 percent is little more than bonus at 11.53 percent which it was liable to pay on correct calculation as seen from Ext. M. 2 Statement of available surplus prepared on behalf of the II Party by M. W. 1. R Gopalan. The question that falls for consideration is the correctness of the statement at Ext M. 12 The Counsel appearing for parties at I-A and B has raised several objections with regard to the particulars mentioned in Ext. M 12 statement. These objections will now be considered in the order in which the same have been raised and are required to be gone into in the matter of calculation of the allocable surplus.

13. The first objection raised by the Parties I-A and B is with regard to the deduction of Rs. 13,92,673 (or roughly Rs. 13.93 lakhs) towards Warrantly Claims as per Ext M. 12 statement. According M W.1 Gopalan, this sum of Rs. 13,92 673 has been arrived at by adding the provision for the year 1971-72, which is Rs. 20,30,803 (as seen from column No. 1 at page 30 of Ext. M-13 Profit a Loss Account for the year ended 31st March 1972) to the opening balance of Rs. 16.06 942 (as seen from Column No 2 as above) and deducting from the total, the closing balance of Rs. 23,05,072. According

to M. W-1 R. Gopalan, Rs. 13,92,673 is the actual expenses incurred towards Warranty Claims for the year 1971-72.

14. The attack made by the parties I-A and B is that such a procedure is not in accordance with the Second Schedule item 6-B, as it is not an expenditure or losses debited directly to the Reserves. It was further urged by the Counsel appearing for the parties I (A) and (B) that no proof, in the shape of vouchers, etc., has been produced by the II Party to show the actual expenses of Rs. 13,92,673 having been incurred.

15. The II Party's financial statements at pages 32 to 34 of Ext M-13 show that there is a separate Warranty Reserve Fund leaving the closing balance of Rs 23,05,072 at the end of the year. The previous year's closing balance for Warranty Claims was Rs. 16,06,942. Therefore it is clear that the Warranty Expenses have been debited directly to the reserves. It is not denied by the counsel for parties I-A and B that these reserves do not fall in the category of clauses (i and (ii) of item 6(d) of the Second Schedule. Therefore, Parties I-A and B are not justified in contending that Warranty Expenses should not have been deducted while calculating the Gross Profits for the purposes of bonus. There is, therefore, no substance in the submission of Parties I-A and B that the expenditure is not relevent to the year of Account. There is no dispute that the closing balance for Warranty Claims for the previous year was Rs. 16,06,942 that provisions was made in Rs. 20,90,803 for the year in question, bringing the total to Rs. 36,97,745 and that the balance left at the end of the year was Rs. 23,05,072. It follows, therefore, that the difference between the aforesaid total and the balance which comes to Rs. 13,92,673 is the actual expenses incurred by way of Warranty Claims. Proof of the said actual expenses by production of vouchers, etc., by the II Party, cannot, therefore, be insisted upon. Parties I-A and B are, therefore, not entitled to contend that the said Warranty Expenses should not have been daducted by the II Party and that on the other hand, the same should have been added back to the net profit as per the Profit & Loss Account.

16 Next, we come to the Production Bonus relating to the previous years and amounting to Rs. 28.05 lakhs (vide final statement at page 40 of Ext. M.13) which, according to the Counsel for Parties I-A and B, should be added back. The reason why, according to the Parties I-A and B's Counsel, this amount should be added back is the following :—

The said expenditure is not referrable to the Accounting year in question (1971-72).

17. It is true that the said item is not referrable to the said Accounting year in the sense that it was incurred in respect of bonus for the previous years Starting from 1964 and upto 1970. But it was actually paid as per Ext. M-5 Settlement dated 9th October 1971 and

is thus business expenditure actually incurred during the accounting year. In connection with the II Party's right to deduct the said amount, the II Party's Counsel has invited attention to Aumbica Mills -Vs-Textile Labour Association (1973 I LLJ 102 (SC) at Special page 110). If the submission of Parties I (A) and (B)'s Counsel were to be accepted, then it would mean that the Profit & Loss Accounts as well as the Balance Sheets starting from the Accounting Year in respect of which Production Bonus under Ext M. 5 has been paid will have to be re-opened and fresh accounts recast. The Counsel for Parties (A) and (b) has not been able to point out with any special season as to which particular year or years, the amount paid by way of Production Bonus under Ext. M-5 Settlement is to be paid. The payment of Production Bonus amount under Ext. M-5 Settlement cannot be supressed or deleted from the Accounts. In accordance with the doctrine of collective bargaining, which in the foundation of the labour management law and relationship. the whole group of workmen who are employed over the years have to be reated as one unit just as the management is treated as one unit. Therefore, the workmen of the II Party, during any accounting year, cannot be said to have sufferred deprivation of their legitimate bonus because production bonus relating to the prior years was paid during the Accounting year. Further even if the Parties I-A and B's Counsel's submission were to be accepted and the old Accounts are re-opened, no useful purpose will be served for the net profit as per the Profit and Loss Account, which is the the starting point for calculation of the Allocable Surplus as per the Second Schedule to the Act, would be effected and brought down by the corresponding figure.

18 Another reason put forward by the Parties I (A) and (B)'s Counsel is that the sum of Rs. 81.96 lakhs paid towards the Profit Sharing Bonus relating to the previous years has not been deducted in a similar manner by the II Party while calculating the Allocable Surplus, The simple reason for such adding back by the II Party is the fact that under item 3 (a) of the Second Schedule to the Act, only Profit Sharing Bonus paid in respect of previous years is to be added back and this is because, the II Party's workmen fell in the class of employees dealt with in Section 32 (vii) of the Act. For the foregoing reasons, the Parties I-A and B's Counsel's submissions that this sum of Rs. 28.5 lakhs should be added back is rejected. Therefore, Parties I-(A) and (B) are also not entitled to contend that Rs 725 should be added back.

19. A big sum which would materially affect the allocable surplus amount is the sum of Rs. 86,84,316 which according to the counsel for Parties I(A) and (B), should be added back [see Parties I(A) and (B)'s calculation sheet]. This submission on the part of parties 1 (A) and (B) is misconceived. As seen from the Profit and oss Account (at page 31 of Ext M. 13), this amount has been brought on the credit

side of the Profit and Loss Account where the relevant entry to be found reads as follows:—

By Sales	...	Rs. 35,25,09,842.
*Net after providing for price revisions of which Rs 86,84,316 relates to prior years.		
Less selling Agent's Commission.		1,03,948.
		35,24,05,894

M.W. 1 Gopalan has explained in his evidence as to what the said amount of Rs 86,84,316 represents. According to him, Goods, like Railway Coaches are sold to the Railways at prices which are provisional and sometimes the prices are finalised during the next Accounting year. When M.W. 1 Gopalan further swears that the difference between the privisional price and the final price is what is meant by the expression, "price revision relating to prior years", it follows that the final prices are higher than the provisional prices which were actually paid during the previous year (see also the evidence of M. W. 2 C. B, Venkat Rao) and the excess thus stands already added back. Therefore, Parties at 1 (A) and (b) are not entitled to contend that the said amount should be added back once again. Merely saying that the said amount does not refer to the accounting year does not give any assistance to the Parties at 1 (A) and (B) for the said Parties should also state how the said amount should be treated in the Profit and Loss Account. If the ground that the said amount does refer to the accounting year were to be accepted, then it would mean that the said amount was not liable to added back and, therefore, should have been deducted. When the II Party's Counsel submitted that he has no objection to such a course being adopted, for, thereby, the net profit as well as the allocable surplus would become reduced, the Counsel for Parties I-A and B refrained from pressing his objection.

20. With regard to the sum of Rs. 21,450 (*vide* Profit and Loss Account at page 30 of Ext M. 13) towards "Loss on Fixed Assets discarded". it was submitted by the Counsel for parties I-A and B that the said sum is Capital loss and should be added back. M.W. 1 Gopalan admits that the said sum is a Capital Loss. But, there is no warrant for Parties I-A and B's Counsel's submissions that this sum should be added back for under Item 3 (d) of the Second Schedule to the Act, Capital Loss on sale or Capital Assets on which depreciation has been allowed for Income-Tax are excluded from being added back. Therefore, Parties I-A and B are not entitled to contend that the sum of Rs. 21,450 should be added back.

21. Then, we come to 3 different items of prior charges, which, according to the Counsel for Parties 1-A and B, have been wrongly

calculated by the II Party for the purpose of determining the Allocable Surplus. In Ext M–2 Statement, the II Party has adopted Rs. 1,69,48,188 as the amount deductable as gross profits under Section 6 by way of Depreciation admissible in accordance with Section 32(i) of the Income Tax Act. According to Parties I–A and B Counsel the said sum comes to Rs. 1,66,71,541 and thus, a sum of Rs. 2,76,647 has been further wrongly deducted by the II Party. The calculation of the Depreciation under Section 32 (i) of the Income Tax Act done by the II Party is to be found at Extra. M. 10 and the Annexures thereto. Ext. M.11 is the Certificate issued by the II Party's Chartered Accountants to the Income-Tax Officer. M.W.2 Venkat Rao Chartered Accountant, swears that the Depreciation noted in Ext M.11 as Rs. 1,69.48.188 has been correctly calculated on the basis of the figures furnished by the II Party as per Ext. M. 10 Statement and the annexures thereto.

22. The Counsel for Parties I(A) and (B) has invited attention to Annexure 'G' Ext M. 10 which contains the statement regarding initial depreciation for certain items of additions during 1971–72. It is pointed out by the Counsel for Parties I–A and B that over and above the sum of Rs. 4,808 which has been disallowed by the Income Tax Officer, the following amounts deducted by the I Party are liable to be added back as the said sums are not permissible to be deducted under Section 32 (i) and (iv) of the Income Tax Act :—

			Rs
1.	Lighting Installations to the Non-Vegetarian Canteen.	...	2,034
2.	Cycle Sheds	...	6,195
3.	Medical Centre	...	66,175
4.	Extension of Co-operative Society.	...	894
5.	Additional Cost on Type II Qrs.	...	1,407
6.	Lighting of Cycle Sheds	...	548
		Total ...	77,243

According to the Counsel for Parties I (A) and (B), the above items 1 to 6 do not qualify for initial depreciation since they are not new buildings and further, though erected during the year, the said buildings are not used for such welfare purposes as enumerated in Clause (iv) of Section 32 (i) of the Income tax.

23 There is absolutely no substance in the submission made by the Counsel for Parties 1-A and B. The buildings in question have not been shown by parties I-A and B as not being used for the welfare purposes enumerated in Clause (iv) of Section 38 (i) of the Income Tax Act, either in the Cross Examination of

M. W-1 Gopalan or M. W-2 C. B. Venkat Rao or by any direct evidence to the contra. Such a contention comes up for the first time during the arguments. Therefore, the Parties I (A) and (B) are not entitled to contend that the II Party has wrongly calculated the depreciation permissible under Section 32(i) of the Income Tax Act and that the amount of depreciation as mentioned by them should have been adopted. The Counsel for the II Party is right in his submission that the Income Tax Officer has not erred in accepting the Depreciation amount of Rs. 1,69,48,188 and disallowing therefrom only a sum of Rs. 4,808 and no further amounts. So, on this item of dispute, I hold that only a sum of Rs. 4,808 disallowed by the Income Tax Officer is liable to be added back and that, however since the adding back of such a small amount is of very little consequence, in as much as the allocable surplus would not become substantially altered so as to effect the rate of bonus, the same need not be taken to account.

24 Next, we come to the sum of Rs. 57,95,740 certified as the Development Rebate permissible under the Income Tax Act by M.W-2 C. B. Venkat Rao, the Chartered Accountent of the II Party. From this amount, Rs. 10,768 has been disallowed by the Income Tax Officer. It is contended by the Counsel for Parties I-A and B that over and above this sum of Rs. 10,768 which has been disallowed by the Income Tax Officer, the following further sums are also liable to be added back :—

1	Water Supply		18,618
			8,361
2	Communication Equipment	...	6,784
3	Bins etc	...	47,908
			1,814
4	Electrical Installations		99,260
			3,428
		Total	1,86,171

As seen from Annexure 'F' to Ext. M-10 Statement, the above amounts represent Development Rebate at 25%. According to Parties I-A and B Counsel, the above items of work are not used directly in the manufacturing operations and so, do not qualify for Development Rebate under Section 33 of the Income Tax Act. The above submission on the part of parties I(A) and (B) is not sustainable for, as seen from Kanga and Palkhivala's—"The Law and Practice of Income Tax" (Volume I, Page 375), the definition of "Plant & Machinery" in Section 43(3) of the Income Tax Act is required to be given a very *vide* meaning. It is observed that 'Plant' in its ordinary sense includes, whatever apparatus is used by a businessman for carrying on his business, except his stock-in-trade which he buys or makes

for sale, but not including animals or the human body. Therefore the parties I-A and B Counsel is not entitled to contend that the above items like water supply, electrical installations and bins are not being used directly in the manufacturing operations.

25. But, under Section 6 of the Payment of Bonus Act only a sum of Rs, 45,00,000 is liable to be taken into account and the same has been done by the II party in the Profit & Loss Account (Vide page 30 of Ext, M-1:).

26. Then, we come to the last item of prior charges deduced by the II Party under item (1) (iii) of the III Schedule of the Payment of Act. As seen from Ext, M-12 Bonus Caliulation Sheet, prepared by M.W. 2 Venkat Rao, what has been deducted is

(i) 5% of Reserves shown in the Balance sheet as at the commencement of the Accounting year, including net profits carried from the previous Accounting year; 6 of Rs. 702.09 lakhs Rs. 42.13 Lakhs

According to Parties I-A and B's Counsel, Return on Reserves presupposes deployment of the amount for business for earning revenue, that there is no proof regarding the use of reserves, that there are other returns specially remarked as reserves and that, further, the whole of the Development Rebate Reserve having been deducted every year as prior charge, there is no justification for further deduction claimed by the II Party. Though there is no such proof as deceaded by Parties I-A and B's Counsel, the deduction classified by the II Party is permissible in the light of the decision in 1959 I LLJ 644. The decisions in 1972 LIC 1256, 1969 I LLJ 523 and 1964, I LLJ 370 cited by the Counsel for parties I-A and I-B are ases relating to Bonus in respect of year prior to 1965.

27. During the course of the evidence, the Counsel for Parties I(A) and (B) raised objection to the II Party's demand towards other items. It was urged that a sum of Rs. 11,55,749 paid as penalty for not submitted the Income Tax in time was not incurred for purpose of business or Revenue and is, therefore, required to be added back. This item of expenditure was incurred during the Accounting year and it has not been shown that the levy of penalty could have been avoided. Nevertheless, as stated by M.W. 1 Gopalan, this amount has been added back in order to avoid unnecessary controversy. This is how, according to II party, the bonus which would have otherwise come to 11.53% because enchanced to 12.62%. The question whether this item, which has been added back, is required to be deleted would arise in the event it is held that the II Party's Calculation of the available surplus requires to be revised in respect of other items The same is left open since I find that the II Party's calculation is in order.

28. During the evidence, the Counsel appearing for Party I-C urged in relation to Ext. M. 12 Statement that the sum of Rs. 277-36 lakhs mentioned as total salary wages for the year 1971-72 is not proved as the total salary/wages of only those employees which is permissible under the Payment of Bonus Act. In other words, it was sought to be urged by Party I-A and B's Counsel that this wage amount includes the wages of other employees of the II Party who are not entitled to bonus under the Payment of Bonus Act or whose wage amount is required to be excluded for the purpose of calculating the allocable surplus. Except the bare suggestion to that effect, no material has been placed by parties. I-A and B's Counsel to show *prima facie* that Rs. 277.36 lakhs does not represent the wages of only those employess which is permissible under the Payment of Wages Act. The failure of the II Party to place the necessary materials on record, which is admitted by M.W. 1 Gopalan in his cross examination, cannot have the adverse effect of the said sum of Rs. 277.36 lakhs not being admitted as the total wages of employees which is permissible under the Payment of Bonus Act. The failure of Party's I-A and B to raise the necessary contention at the appropriate stage is partly responsible for the absence of the necessary material on behalf of the II Party for the II Party is not expected to anticipate all or any sort of objections on behalf of I Parties. After all, the II Party's accounts have been duly audited and also accepted by the Income Tax authorities and it is difficult to conceive as to how the wage bill of the employees can be inflated so as to include the wage amounts of other employees who are not entitled to bonus under the Act.

29. During the course of the evidence, a similar contention which has not been putforward in the objection statement, was raised by the Counsel appearing for Party I-C by disputing the provision for Gratuity fixed at Rs. 17,32,395 The Counsel appearing for Party I-C urged that the actual amount paid towards Gratuity during the Accounting year has not been disclosed. To meet this objection, the II Party examined M.W, 3 N.T. Raju, the Consulting Actuary of Hyderabad, who has proved the etatements at Exts M. 17 and M.18. Even during his cross examination, the procedure followed has been questioned. But Party I-C has not placed any material to show *prima face* that the calculations made by M W. 2 Raju are not to be relied upon and that further information has not been made available. Therefore the objection regarding the gratuity amount having been fixed at a higher figure which requires to be rejected.

30 In the foregoing paragraphs, several objections raised by the I Parties have been all considered and found to be not liable to be accepted. The II Party has fully established that it was justified in declaring 12.62% as bonus for 1971-72.